

MAY 03 2006

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FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 5713  
ANCIENT ORDER OF HIBERNIANS

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM

2006 MAY -3 P 4: 35

**SENSITIVE**

GENERAL COUNSEL'S REPORT

The Office of General Counsel has scored MUR 5713 as a low-rated matter. Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The facts giving rise to this complaint, which were reviewed by the Commission on March 9, 2006, involve the contribution of \$500 to Congressman Martin Meehan's Congressional Committee through the purchase of tickets to attend a fundraiser in March of 2001. Initially the tickets were to be purchased by the respondent, Ancient Order of Hibernians ("AOH"), but after learning of the potential illegality of the purchase, a member of the AOH purchased the tickets with funds from his own bank account, on or about March 13, 2001. While the member claims that the transaction was not illegal, he does not indicate whether AOH reimbursed him for the contribution.

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1 In addition to being low-rated, the Office of General Counsel has also determined that  
2 the majority of the alleged activity in this case took place over five years ago. In *Federal*  
3 *Election Commission v. Williams*, 104 F.3d 237 (9<sup>th</sup> Cir. 1996), *cert. denied*, 522 U.S. 1015  
4 (1997), the United States Court of Appeals for the Ninth Circuit held, *inter alia*, that the five-  
5 year statute of limitations for filing a suit to enforce a civil penalty found in 28 U.S.C. § 2462  
6 applied not only to judicial proceedings to enforce civil penalties already imposed, but also to  
7 proceedings seeking the imposition of these penalties, including the Commission's law  
8 enforcement suits under 2 U.S.C. § 437g(a)(6).

9 Thus, in reviewing both the merits and the procedural posture of MUR 5713, and in  
10 furtherance of the Commission's priorities and resources relative to other pending matters on  
11 the Enforcement docket, the Office of General Counsel believes that the Commission should  
12 exercise its prosecutorial discretion and dismiss the matter.<sup>1</sup> See *Heckler v. Chaney*, 470  
13 U.S. 821 (1985).

14 **RECOMMENDATION**

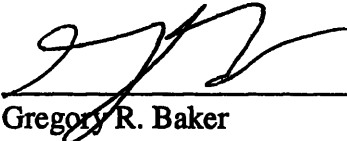
15 The Office of General Counsel recommends that the Commission dismiss  
16 MUR 5713, close the file effective two weeks from the date of the Commission vote, and  
17 approve the appropriate letters. Closing the case as of this date will allow CELA and  
18 General Law and Advice the necessary time to prepare the closing letters and the case file for  
19 the public record.

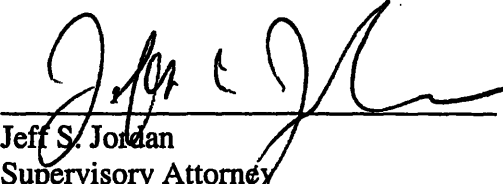
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James A. Kahl  
Deputy General Counsel

5/3/06  
Date

BY:

  
Gregory R. Baker  
Special Counsel  
Complaints Examination  
& Legal Administration

  
Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination  
& Legal Administration

Attachment:  
Narrative in MUR 5713

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4 **MUR 5713**

5  
6 **Complainant:** John O'Gorman

7  
8 **Respondents:** Ancient Order of Hibernians (AOH) Division 16 and  
9 Francis (Bud) V. Foley

10  
11 **Allegations:** Complainant alleges that the Ancient Order of Hibernians ("AOH"), a tax-  
12 exempt organization, had authorized one of its members, Francis V. Foley, to purchase  
13 \$500 in tickets for members and their families to attend a March 17, 2001 fundraiser for  
14 Congressman Martin Meehan, a fellow AOH member. The complainant notes that the  
15 FEC contributor database discloses a \$500 contribution from Francis Foley to the  
16 Meehan Committee on March 13, 2001. Thus, the complainant speculates that the \$500  
17 contribution made by Mr. Foley may have been merely a contribution by AOH funneled  
18 through Mr. Foley to support Congressman Meehan.

19  
20 **Responses:** Mr. Foley responded by noting that when he discovered that AOH could not  
21 purchase the tickets due to its "non profit" status, he decided as the oldest member of  
22 AOH, division 16, to purchase the tickets out of his personal funds. Although Mr. Foley  
23 does not specifically refute the innuendo that he may have been reimbursed for the ticket  
24 purchase, he does state that neither he nor AOH violated the Federal Election Campaign  
25 Act.

26  
27 **General Counsel Note:** The facts giving rise to this complaint took place between  
28 March 13-17, 2001 and, therefore, are beyond the applicable statute of limitations for  
29 FEC Enforcement action.

30  
31 **Date complaint filed:** March 8, 2006

32  
33 **Response filed:** April 3, 2006

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